

If the interest which a creditor takes by the will, is not co-extensive with, or of the same nature of, that to which he is entitled from the testator as his debtor, he will be entitled to both interests.

The degree of intention necessary to raise a case of election must plainly appear upon the face of the will, but the court is not to disregard what amounts to a moral certainty of the intention of the testator.

Though evidence *debars* the will, will not be admitted to prove or disprove such intention, there is no valid objection to such evidence to show the state and circumstances of the property.

A party cannot take a benefit under a will, and at the same time defeat its provisions.

[This case originated in the equity side of Baltimore County Court, and was thence transferred to this court.

The bill was filed by Charles A. Waters and Ann Rebecca, his wife, (since deceased,) for the specific performance of a contract, entered into by the late Charles Waters, (grandfather of the said Charles A.) previous to, and in consideration of the intermarriage of the latter with the said Ann Rebecca, to purchase for the complainants, on the consummation of the intended marriage, a farm, to be fully stocked; to pay all the debts of the said Charles A., existing at the time of the marriage—and to furnish them with adequate means of subsistence during the first year thereafter. The bill stated, that in part performance thereof, the grandfather shortly after the marriage, purchased a farm in Baltimore county, containing about 189 acres, and put the complainants in possession, having partly stocked it, and was about to pay the debts of the said Charles A., amounting to about \$2000, when he was prevented by a sickness which caused his death. The farm was only partly stocked—and no provision had been made for the complainant's support during the year ensuing their marriage. Elizabeth A. Howard and Rebecca A. White, granddaughters of the deceased and sisters of Charles A. Waters, together with their husbands and infant children, and Freeborn G. Waters, the trustee of the deceased, were made parties. The answers admitted the purchase of the farm by the deceased, and the occupancy thereof by the complainant after his marriage, but denied all intention on the part of the deceased, to put it at his control and disposal or to give